In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 934

AMERICAN EASTERN CORP., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

For the reasons stated in our memorandum in No. 861, *Sword Line, Inc.* v. *United States*, we do not oppose the granting of a writ of certiorari in the present case although we believe the court below correctly decided both that the United States district courts have exclusive jurisdiction under the Suits in Admiralty Act of all quasi-contract claims for overpayment of charter hire for the use of Government vessels—even though the claim is founded upon Acts of Congress—and that such

quasi-contract causes of action do not accrue subsequent to the redelivery of the vessels, but arise immediately upon the violation of the statute.

This case was decided by the Court of Appeals *per curiam* upon the authority of its prior decision in the *Sword Line* case.[1] After the decision of the court below in the *Sword Line* case but before the ruling in the present case, the Court of Claims expressly rejected the reasoning of the Second Circuit, held that admiralty had no jurisdiction in this situation, and decided four cases[2] in admitted conflict with *Sword Line*. While we believe that it is the ruling of the Court of Claims which is erroneous, it will be some time before any of the four cases decided by that court are in a posture for this Court's review.[3] Seventy-five similar cases are meanwhile being held in abeyance in district

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[1] 228 F. 2d 344, confirmed on rehearing, 230 F. 2d 75.

[2] *Smith-Johnson S. S. Corp.* v. *United States*, Ct. Cls. No. 98-55; *Pacific Far East Lines, Inc.* v. *United States*, Ct. Cls. No. 262-55; *Black Diamond S. S. Corp.* v. *United States*, Ct. Cls. No. 314-55; *Marine Transport Lines, Inc.* v. *United States*, Ct. Cls. No. 242-55; all decided March 6, 1956, and not yet reported.

[3] A petition for certiorari has been filed by one of the plaintiffs, *Smith-Johnson S. S. Corp.* v. *United States*, No. 898. The petition asks this Court to review an order of the Court of Claims which sustained petitioner's own motion to strike from the Government's answer the defense of lack of jurisdiction of the subject matter by reason of the exclusive Suits in Admiralty Act jurisdiction. But at the same time petitioner has moved for a summary judgment of liability and the Court of Claims, over the Government's objection, has set the motion for argument on the June calendar. Meanwhile, the Government's motion for rehearing on the question of jurisdiction is still pending in the Court of Claims. See the Government's memorandum in No. 898.

courts of five of the circuits as well as in the Court of Claims, and the early resolution of the existing conflict appears desirable from the standpoint of orderly administration of justice.

For the foregoing reasons, we do not oppose the granting of the writ of certiorari in this case.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

MAY, 1956.

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